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ART. XI.—*North-eastern and Northern Boundary.*

1. *Decision of His Majesty the King of the Netherlands, on the Questions submitted to him by the Governments of the United States and Great Britain, for determining the Boundary Line between the United States and the British Provinces.*
2. *Protest of the Envoy Extraordinary and Minister Plenipotentiary of the United States, against the Decision of the King of the Netherlands, on the Questions submitted to him, as Arbiter between the United States and Great Britain, relative to the Boundary of the United States.*
3. *Report of a Joint Committee of the Legislature of the State of Maine, on the answer made by the King of the Netherlands, in relation to the North-eastern Boundary of the United States ; read and accepted by both Branches of the Legislature.*

In the treaty of peace between the United States and Great Britain, of September 3, 1783, a part of the boundary line, between the territory conceded to the former, and the provinces of the latter, is described in the following words. 'From the north-west angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source of St. Croix river to the highlands; along the said highlands, which divide those rivers that empty themselves into the St. Lawrence, from those which fall into the Atlantic ocean, to the north-westernmost head of Connecticut river, thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraquy,' &c.; and 'east, by a line to be drawn along the middle of the river St. Croix, from its mouth in the bay of Fundy to its source, and from its source, directly north, to the aforesaid highlands, which divide the rivers that fall into the Atlantic ocean, from those which fall into the river St. Lawrence.'

This description, specific as it seems, and the less liable to uncertainty, from being a repetition and confirmation of the boundaries previously established, and at the time subsisting between the Colonies whose independence was acknowledged, and the provinces of Nova Scotia and Lower Canada, has given occasion to doubts on several points, and to controversies

of long standing between the two countries. The first question which came into dispute was, which of the rivers falling into Passamaquoddy bay, was to be taken as the St. Croix river, described in the treaty. For the settlement of this controversy, it was provided in the fifth article of Mr. Jay's treaty, made in 1794, that three Commissioners should be appointed, who should be sworn impartially to examine and decide the question. The Commissioners so appointed, unanimously decided, in the year 1798, that the northern branch of the Schoodick river, it being the main branch of the river, known at its mouth as the St. Croix, should be regarded as the St. Croix river intended by the treaty. This branch they traced to its source, and there established a monument, for determining the point from which the due north line of the treaty should run.

From this time to the date of the treaty of Ghent, in 1814, no measures were taken for marking the boundary between the two countries, from this monument to the highlands,—along the highlands to the source of the Connecticut river,—along the Connecticut to the forty-fifth degree of latitude,—or along the forty-fifth degree of latitude to the Iroquois, Cataraquy, or St. Lawrence river. A number of townships, however, were surveyed, by authority of the State of Massachusetts, and granted to literary institutions, bordering on the supposed due north line, from the source of the St. Croix. In the years 1771 to 1774, a line was run, in compliance with an order of the King in council, under the direction of the Provincial Governor, on the supposed forty-fifth parallel of latitude, between Lower Canada on the north, and Vermont and New-York on the south; and this line continued to be the limit of the jurisdiction of the respective Governments, subsequently to the peace of 1783, and in fact, so continues to this time. But this line was long since known to have been unskilfully and inaccurately run, and was, therefore, not considered as definitively settled. It remained, also, to be determined, which of the four branches of Connecticut river should be taken as the 'north-westernmost head' of that river. By the fifth article of the treaty of Ghent, it was provided, that two Commissioners should be appointed, sworn, and authorized to ascertain the line of boundary, from the St. Croix river on the east, to the point where the forty-fifth parallel of latitude strikes the St. Lawrence on the west, in conformity with the provisions of the treaty of 1783, and to cause it to be surveyed and marked.

It was also made their duty to prepare a map of the boundary, particularizing the latitude and longitude of the north-west angle of Nova Scotia, of the north-westernmost head of the Connecticut river, and of such other points of the boundary as they might deem proper. The extent of the boundary line, thus to be ascertained, surveyed and marked, was about six hundred miles. It was further stipulated in the treaty, that in the event of the two Commissioners, so to be appointed, differing, or both or either of them declining, or wilfully omitting to act, they should make, jointly or separately, a report or reports to their respective Governments, stating the points on which they might differ, and the grounds upon which their respective opinions should be formed ; and the report or reports so to be made, should be referred by the two Governments to some friendly sovereign or State, to be then named for the purpose, and who should be requested to decide on the differences, which should be stated in the report or reports of the Commissioners.

Under this provision of the treaty of Ghent, Commissioners were appointed by the two Governments, who were several years employed in making the necessary examinations and surveys, preparatory to a delineation of the line of boundary. The public have not been furnished with reports of the Commissioners, containing the results of these examinations, or with any very specific statement of the points on which they disagreed. It was early understood, however, that there was an irreconcilable difference between them, in regard to the highlands, described in the treaty, as dividing the waters which fall into the St. Lawrence, from those which fall into the Atlantic ocean ; the British Commissioner maintaining that the highlands on the south of the river St. John are intended, and that the whole course of that river should be made to fall within the limits of the British provinces ; and the Commissioner of the United States maintaining that the north-west angle of Nova Scotia is situated at the north of the St. John, and that the highlands described in the treaty, are those which form the northern and western boundaries of the basin of that river. They also differed in the designation of the branch of Connecticut river, north of the forty-fifth degree of latitude, which is to be considered as the north-westernmost source of the river described in the treaty.

The American Commissioner contended, that Hall's river

or Indian river, westerly branches of the Connecticut, which unite with the main branch near the forty-fifth degree of latitude, best answer the description. The British Commissioner, on the other hand, maintained that the line of boundary should follow the main branch of the river, so far as it retains the name of Connecticut, viz. to Connecticut lake; and that the north-westernmost source should be taken to be the north-westernmost stream which flows into this lake. The American and British astronomers, on making a variety of observations for determining the forty-fifth parallel of latitude, ascertained that the northern boundary of Vermont had been laid down, in nearly its whole extent, from half a mile to a mile too far north, and that, on the side of New York, the line was materially inaccurate. The extent of this deviation is shown on Hale's Map of New England, on which the existing line is laid down to correspond with its position in reference to the true forty-fifth parallel of latitude, as ascertained by these observations. Before the surveys were completed, the American Commissioner objected to a further prosecution of them, on the ground that it was ascertained that the line along this parallel of latitude had been determined by proper observations, and ratified by the Crown of Great Britain, while the adjoining countries were British provinces; that it had been for nearly sixty years the acknowledged boundary between them, and that there would be no difficulty in ascertaining the line so determined. The American agent contended also, that if the ground above stated were to be waived, and the line run anew, it ought to be run on the parallel of the '*geocentric* latitude,' as contra-distinguished from the '*observed* latitude.' This last claim, however, was not countenanced or supported by the American Government.

The Commissioners of the two powers were occupied in these investigations from the year 1816 to 1822; when, after long discussions, in which they found it impracticable to come to an agreement on the several points above stated, they made separate reports of their proceedings to their respective Governments. According to the terms of the treaty of Ghent, these reports should have been submitted to some friendly sovereign or State, to be named for that purpose, who should be requested to decide on the differences stated in them. But neither Government seems to have been entirely satisfied with the statement of the case, contained in the report of its Com-

missioner ; and a new arrangement was entered into, by a convention between the two Governments, which was executed on the 29th of September, 1827. By this convention, it was agreed to substitute for the reports of the Commissioners, new statements of the whole case, and to annex to those statements such of the existing documents, and such parts of the reports of the Commissioners, as each party might choose. It was also agreed between the two parties, that a map marked A, drawn up for the purpose of exhibiting the several highlands and water-courses, and the line contended for by them respectively, should be taken as mutually acknowledged evidence of the topography of the country, and that Mitchell's map, published in 1755, should be taken as an exhibition of the topography, as it was understood by the framers of the treaty of 1783. Map A does not in fact contain a very accurate representation of the water-courses, though it is sufficiently accurate for any purposes necessary for a just decision of the question. It may not, however, be found correct enough to serve as a guide for the delineation of the line according to the decision. It had been proved on a former occasion, by the depositions of Messrs. Adams and Jay, that Mitchell's map was before the Commissioners who formed the treaty in 1783.

The two Governments subsequently agreed in the choice of the King of the Netherlands as the arbitrator to whom the question should be submitted, and he accepted the trust. Statements were drawn up under the direction of the two Governments, with great labor, research, and ingenuity. Each party made a first statement of the case, which was submitted to the adverse party ; after which, each made a further definitive statement. To these statements were subjoined, as appendices, collections of official documents, grants, historical papers, and maps. Each party furnished from its own archives such documents as were required by the other. From the effort which was made on each part to exhibit as strong a case as possible, the length of time occupied in the investigation, and the number of persons employed in it, under the several commissions which have been appointed, it may be presumed that every fact material to the issue has been collected. The American statements were drawn up and signed by Messrs. Gallatin and Preble, appointed by the Government for the purpose, the latter with a commission as Envoy Extraordinary and Minister Plenipotentiary at the court of the Netherlands. The

British statements were certified by the Earl of Aberdeen, then British Secretary of State for Foreign Affairs.

These statements were laid before the King of the Netherlands on the 1st of April, 1830. On the 10th of January following, he handed to the ministers of the two Governments his decision on the points submitted. We now propose to give a very brief review of the three questions thus decided.

In a former number,* published previously to the drawing up of the statements above referred to, we went into a full examination of the most important of the questions embraced in this decision, namely, that which relates to the line of boundary between the State of Maine and the Provinces of New Brunswick and Lower Canada. In that article, we presented what we conceived to be the material facts and authorities, on which the decision of the question ought to rest, so far as we were able to collect them from public historical documents. The researches of our official agents have brought together a great accession of authorities for the corroboration of facts, which, however, are sufficiently proved by well-known historical documents. These serve to strengthen the case presented by our Commissioners, if any additional proof could be supposed to be necessary; but such an accumulation of proofs seems to be almost superfluous, as the argument in support of the American claim, embracing all the material points, which may be drawn from a few incontestible facts, appears to us to be conclusive, and entirely unshaken by the arguments of the opposite party. The effect of the multiplicity of proofs on the mind of the arbitrator, may have been to divert his attention from the strong points of the case, rather than to fortify the argument. We do not propose to repeat the argument in support of the view of the case which we have taken, and which appears to us to present one of the plainest questions which were ever made the subject of national controversy; nor do we propose to enumerate the new authorities in support of the view already taken, which have been produced by the official investigations, drawn chiefly from the documents furnished from the British offices. We will merely recapitulate a few of the facts, which will show that the line north of the St. John, claimed by the American Government, is as clearly defined by the words used in the treaty of 1783, as it can now be defined

* April, 1828, Vol. XXVI. p. 421.

by any form of words whatever ; and that the argument of the British Government, in support of the claim of a line south of the St. John, is not even plausible, or sufficient to excite the slightest doubt in the mind of any one who will look at the facts.

The boundary, as defined in the treaty, is to run 'from the north-west angle of Nova Scotia, viz. that angle, which is formed by a line drawn due north from the source of St. Croix river to the highlands, along the said highlands,' &c. What can be clearer, than that the angle, which is described as the place of beginning, is the point where the western boundary line of Nova Scotia, running due north, meets the northern boundary of Nova Scotia, running from east to west ? The two lines, thus forming the angle, are described in the treaty, one as running due north from the St. Croix, and the other as running along the 'highlands, which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean.' Now it is argued in support of the British claim, and this constitutes the chief part of their argument, that the St. John is not a river which empties itself into the Atlantic, but one which empties itself into the bay of Fundy. We reply, that it is entirely immaterial to the argument, whether the St. John is properly described as a river emptying itself into the Atlantic, or not, though in point of fact, we insist, that it is properly so described. It does not depend upon this description to show which were the highlands intended. They are clearly the highlands, which, at the time of the treaty, formed the northern boundary of Nova Scotia, and as such formed one of the sides of the angle, which was to constitute the starting point of the boundary described in the treaty. This line is one about which there cannot be, and never has been, the least doubt. It is clearly defined in more than twenty documents of the highest authority, issuing from the British Government, from the year 1763 to the date of the treaty, and uniformly known and recognised, even to the present day. We quoted upon this point in our former article, the king's proclamation of October 7, 1763, establishing the province of Quebec, in which the boundary of that province is described as running 'along the highlands, which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea, and also along the north coast of the bay of Chaleurs ;' the act of Parliament of 1774, for making more effectual pro-

vision for the government of the province of Quebec, in which the province is described as ‘bounded on the south by a line from the bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea ;’ and the royal commission to Montague Wilmot, as Governor of Nova Scotia, in which the said province is described as bounded to the northward, ‘by the southern boundary of our province of Quebec,’ and to the eastward by the river St. Croix to its source, ‘and by a line drawn due north from thence to the southern boundary of our colony of Quebec.’ Among the documents accompanying the statement of the case submitted to the arbitrator, was a series of royal commissions to the governors of the provinces of Quebec and Nova Scotia, which show, that the limits of the two provinces remained unaltered at the time of the treaty, and we believe they are in fact unaltered to this day. For example, in the commission from the king to Frederick Haldimand, Esq. as governor in chief of the province of Quebec, granted September 18, 1777, the boundaries of the provinces are described in part in the following words : ‘bounded on the south by a line from the bay of Chaleurs, along the highlands, which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea, to a point in forty-five degrees of north latitude, on the eastern bank of the river Connecticut.’ Mr. Haldimand continued in office, under this commission, until after the treaty, and on the 22d of April, 1786, a commission was granted to his successor, Sir Guy Carleton, in which the same boundary was thus described : ‘On the south by a line *from the bay of Chaleurs*, along the highlands, which divide the rivers that empty themselves into the river St. Lawrence, from those which *fall into the Atlantic ocean, to the north-westernmost head of Connecticut river.*’ It will be perceived, that here the precise words of the treaty are adopted, words of similar meaning having been used in all the descriptions of the boundary, from the proclamation of 1763 ; all of them describing a line of highlands extending from the bay of Chaleurs to the head of the Connecticut river. In the commission to John Parr, Esq. dated July 29, 1782, which remained in force at the date of the treaty, he was constituted ‘captain-general, and governor in chief of our said province of Nova Scotia, bounded on the westward, by a line drawn

from Cape Sable across the entrance of the bay of Fundy to the mouth of the river St. Croix, by the said river to its source, and by a line drawn due north from thence to the southern boundary of our colony of Quebec, *to the northward by the said boundary, as far as the western extremity of the bay des Chaleurs.*' How is it possible for any one, with these precise descriptions before him, to doubt what is the position of the north-west angle of Nova Scotia, or of the highlands, which indicate the line forming one side of the angle, and along which the boundary of the United States must run, from that angle? It is as certain, that the line of highlands terminates with the bay of Chaleurs, in one extremity, as that it strikes at the head of the Connecticut river at the other. It is consequently as certain, that the highlands described are those north of the St. John, as any fact in geography can be.

Yet, in the face of these authorities, without denying the correctness of one of them, the authors of the British statement contend, that the point designated in the treaties as the north-west angle of Nova Scotia, 'is found at or near an elevation called Mars Hill, which is situated in a due north line from the source of the St. Croix river, and south of the river St. John; that the highlands intended by the treaty are those extending from that point to the Connecticut river; and that the rivers Penobscot, Kennebec, and Androscoggin, are the rivers falling into the Atlantic ocean, which are intended by the treaty to be divided from the rivers which empty themselves into the St. Lawrence.' It would seem to be a sufficient answer to this remarkable pretension, that the point assumed is no angle whatever, but is a point in the middle of what is acknowledged to be the western line of Nova Scotia, running due north and south without any deviation;—that the point assumed is as far distant from the north-west angle of Nova Scotia, as constituted by the royal commissions limiting the jurisdiction of the province, as it is from the north-eastern angle;—and, finally, that the highlands here indicated, do not divide the waters which empty themselves into the St. Lawrence from those which empty themselves into the Atlantic, but divide the waters of the St. John from those of the Penobscot, both being Atlantic rivers, one terminating in the bay of Fundy, and the other in the bay of Penobscot, and each at a small distance from the Atlantic itself. To out-

weigh these objections, the only argument which has the merit of being even plausible is, that in the description of the highlands in the words of the treaty, on the supposition that the American claim is correct, it is necessary to regard the St. John as a river which empties itself into the Atlantic ocean. A great portion of the argument in the British statement is directed to the point, that, as the St. John confessedly terminates in the bay of Fundy, it cannot be included in the description of rivers falling into the Atlantic. It would seem to be a sufficient answer to this argument, that the framers of the treaty could not have been ignorant of the existence of the river St. John, and that in describing either of the ranges of highlands in question, they must have had the waters of this river distinctly in view ; yet they have described, in common with the other documents to which we have referred, only two classes of streams, one falling into the St. Lawrence, and the other falling into the Atlantic. The St. John certainly does not, in any possible construction of the words, fall into the St. Lawrence. It does, on the other hand, in a sense in which the language is often, and with entire propriety used, fall into the Atlantic ; that is, it falls into the Atlantic through the medium of the bay of Fundy, a small arm of the Atlantic, in the same sense in which the Penobscot falls into the Atlantic through the Penobscot bay, the Androscoggin through the Kennebec river, and the Connecticut through Long Island sound. The description of the St. John, as a river that empties itself into the Atlantic, is intelligible and strictly proper ; and although it might with equal propriety have been described as falling into the bay of Fundy, yet when the alternative is to regard it as either a river falling into the Atlantic, or one falling into the St. Lawrence, it must inevitably be regarded as included in the former description. But admitting that this point is doubtful, the designation of the highlands forming one of the sides of the angle, depends less on this description, as we have before shown, than on their forming the northern boundary of Nova Scotia, and being the range of highlands extending from the bay of Chaleurs to the head of the Connecticut river.

Feeble and inconclusive as this argument is, the royal arbitrator seems to have considered it as of some weight, and to have suffered it to divert his mind from the true point of inquiry, viz. ; where is the northern boundary of Nova Scotia?—an inquiry indispensable for determining the position of the

angle, which constitutes the point of commencement of the boundary line. He is pleased to consider the historical angle in the treaty of 1783, as a *petition de principe*, which expression, in the translation of the decision, is absurdly enough rendered 'a petition of principle.' It is true, that the angle described is in one sense an assumed point, the precise location of which was to be ascertained by the determination of other points; but the proper location of this point is as exactly determined by the description in the treaty, as if it had been described by the degrees and minutes of latitude and longitude. All that is necessary for establishing this point as a geographical boundary is, to make a practical delineation of the due north line from the source of the St. Croix, and of the boundary from the bay of Chaleurs westerly, between the provinces of Quebec, now called Lower Canada, and Nova Scotia, now called New Brunswick. There might be room for some difference of opinion, as to the precise point at which the highlands should meet the bay of Chaleurs, or the waters of the Ristigouche river; but no man can seriously maintain, that the northern boundary of Nova Scotia or New Brunswick meets the western boundary of the same province south of the St. John river, or that a north-western angle can be formed any where but at the meeting of those two lines.

The arbitrator argues, that the reference in the treaty to the boundaries previously existing between the provinces, does not imply the entire coincidence of the boundaries as settled by the treaty with those ancient boundaries, and mentions instances in which the boundary described in the treaty departs from that previously existing. This is very true, yet when the previously existing boundaries are evidently referred to for the sole purpose of determining a specific point, and are not even proposed to be altered, as is true in regard to the boundaries of Nova Scotia, it seems impossible to doubt, that these lines were to be taken as previously known by precise descriptions, and to serve as a substantial part of the description indicating the future boundary. But the arbitrator sees fit to throw them so far out of consideration, as not to suffer them to explain a supposed ambiguity in another part of the description.

The royal arbitrator having assumed that the description of 'rivers that empty themselves into the Atlantic ocean' does not necessarily include the St. John, and that the reference in

the treaty to the boundaries previously existing between the provinces, does not imply the coincidence of the boundaries as settled by the treaty with those ancient boundaries, goes on thus to state the main principle on which he founds his decision. In quoting this part of the decision, we translate it a little differently from the official version.

‘Considering that if, in the second place, in contra-distinction from rivers discharging themselves into the river St. Lawrence, we might, with propriety, according to the language ordinarily used in geography, include the rivers falling into the bays of Fundy and of Chaleurs, with those falling directly into the Atlantic ocean, under the generic denomination of rivers falling into the Atlantic ocean, it would be hazardous to include in this class the rivers St. John and Ristigouche, which the line claimed at the north of the St. John separates immediately from the rivers falling into the river St. Lawrence, not with other rivers flowing into the Atlantic ocean, but alone. For it would be wrong, in interpreting the boundary fixed by a treaty, in which each expression ought to have a meaning, to apply to two particular cases a description which would also include the Schoodac lakes, the Penobscot, and the Kennebec, which fall directly into the Atlantic ocean. We must therefore conclude, that the treaty of 1783 meant highlands separating, as well mediately as immediately, the rivers which empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean; a principle equally realized by the two lines.’

Having thus come to the conclusion, that both the highlands north of the St. John, and those on the south of that river, come within the description of highlands dividing the waters falling into the St. Lawrence from those falling into the Atlantic, he proceeds to state the considerations on which he rejects the claim, on the part of each, to a preference over the other, and finally comes to the conclusion, that as both lines answer this part of the description, and as there is no sufficient ground for giving one a preference to the other,

‘It will be proper to adopt, for the boundary of the two States, a line drawn due north from the source of the river St. Croix, to the point where it strikes the middle of the channel of the river St. John; thence the middle of the channel of that river, ascending it to the point where the river St. Francis falls into the St. John; thence the middle of the river St. Francis, ascending it to the source of the most south-westerly branch, which source we mark on the map A by the letter X, authenticated by the signa-

ture of our Minister of Foreign Affairs; thence a line drawn due west to the point where it unites with the line claimed by the United States of America, and traced on the map A; thence the said line to the point where, according to this map, it coincides with that claimed by Great Britain; and thence the line marked on the said map by the two powers, to the north-westernmost head of the Connecticut river.'

Thus, by adopting a construction not hinted at in the statements of either party; by assuming, contrary to the fact, that if the St. John and Ristigouche are to be considered rivers of the Atlantic, they are the only rivers, answering the description, which are immediately divided by the line north of the St. John, from the rivers emptying themselves into the St. Lawrence (for it will be seen on reference to both the maps in the case, that the sources of the Androscoggin and Kennebec, and in one of them, of the Penobscot, are contiguous to that line); by throwing out of the case those parts of the description which refer to well-known existing boundaries between the Colonies, the arbitrator comes to the conclusion, that the treaty contains no description susceptible of a definite interpretation. He comes to this conclusion at the expense of making what appears to us an important clause in the treaty without meaning, at the expense of involving the mathematical absurdity of supposing an angle in the middle of a continued straight line, and of adopting, as the true interpretation of the treaty, in the place of the highlands described, the channel of a river, affording a line the most remote possible from the highlands, claimed by either party.

It is very apparent, that the arbitrator was led to adopt this very awkward construction, by the desire of finding some principle on which he might divide the territory in dispute between the two parties, and thus avoid the unpleasant alternative of deciding against the claim of one of them. The decision has been regarded by some as not intended to be an actual award, under the terms of the submission, but merely a recommendation of terms of compromise, which are not binding as a judgment on either party, but are merely proposed to them for their voluntary adoption. We do not so consider it. The arbitrator apparently intended to decide, that the treaty itself affords no ground for giving a preference of one line over the other, that the uncertainty is of a nature not to be removed by further surveys or evidence, and that, therefore, it is proper, as

a matter of right, and as the only mode of settling the point at issue, to take an intermediate line between the doubtful points. Having decided that the boundary ought to be on an intermediate line, he proceeds to determine where that line ought to run.

The tract of country in dispute embraces an extent of about seven millions of acres, occupied by three thousand inhabitants. This decision assigns about two millions of acres to Great Britain, and five millions to the United States. The inhabitants are settled chiefly on the banks of the river St. John, and in about equal numbers on the two sides of the river. They are chiefly of French origin, being in part descendants of the Acadian French, and in part emigrants from Canada. The country through the whole valley of the St. John, is nearly level; it is covered with valuable timber, and has a good soil. It has been regarded as a valuable portion of the State of Maine, which would in the course of a few years be covered with inhabitants of New England origin. The portion assigned by this decision to Great Britain is particularly valuable to the adjoining provinces, on account of the communication which it affords between the two. The inland route from Nova Scotia and New Brunswick to Quebec passes through this territory, following the course of the St. John and Madawasca rivers. These rivers are fine navigable streams. The St. John is navigated for two hundred miles within this territory, like a canal, by boats towed in their ascent by horses travelling on the smooth, gravelly banks, and in their descent floated down by the rapid current of the river.

The American Minister at the Court of the Netherlands, regarding this decision as a departure from the authority given to the arbitrator, under the convention of 1827, and the treaty of Ghent, immediately entered his protest against it, on the ground that it abandons altogether the boundaries of the treaty, and substitutes for them a distinct and different line of demarcation.

The Legislature of Maine also, in the report adopted by them, named at the head of this article, declare the decision to be null, and not binding upon the Government of the United States, on several grounds. The first of these is, that by the terms of the treaty of Ghent, the question was to be referred to the decision of some friendly sovereign or State; that by agreement between the parties, it had been referred to the King of the Netherlands; but that before the decision was

made, the sovereign so selected, ceased to be the King of the Netherlands, having lost three fifths of his dominions, and become only King of Holland ; and that from the circumstances attending this change of his situation, he had become dependent on the Government of Great Britain, and under the necessity of maintaining friendly relations with it. There might have been some force in this objection, had it been urged as soon as the change on which it is founded occurred, and before the decision was made ; but it must be considered as waived, by the neglect to state it during a period of several months after the occurrence of the circumstances on which it is founded, and until after the decision was made known.*

The second ground on which the Legislature of Maine insist that the decision is not binding, is that alluded to above, that the arbitrator has in fact made no award, but has merely given his advice. The Government of the United States, they say, ‘cannot feel themselves bound to adopt or be governed by the advice of the arbiter, particularly when his advice was not sought or asked by them, and was given at a time when his situation gave him peculiar inducements for favoring Great Britain.’ On this point, we have expressed an opinion above.

The next ground on which they deny that the faith of the United States is pledged to a compliance with the decision, is, that it is a departure from the question submitted.

‘The question,’ they say, ‘submitted to the arbiter, was not a question of *law* or *equity*, it was barely a question of fact, and he only had authority to decide the fact under the treaties and the claims which had been set up under them by Great Britain and the United States. His authority was limited to decide whether the line claimed by Great Britain on the south, or the line claimed by the United States on the north of the St. John, was the line intended and described in the treaty of peace of 1783. The authority of drawing or recommending a new line, however much it was for his interest to do it, or for the interest of the British that it should be done, was not conferred by the Convention. The arbiter not having pursued the authority conferred on him by the “high interested parties” in his decision, but having drawn a new line, not on the land, but in the beds of rivers, in a considerable part of its course in direct violation of the terms of the treaties and Convention, and the claims of the respective parties, from which all his authority was derived, it necessarily follows, that his decision is null and void, and ought not to be regarded by the United States as having any force or effect.’

There is certainly much force in this reasoning; yet it is difficult to adopt the conclusion which is drawn from it, without assuming that the arbitrator has exhibited a great want of understanding, or has not acted in good faith, in the manner in which he has discharged the duty which he had undertaken. In an extreme case, where very important national interests were involved in the decision, there can be no question that such a course would be justifiable. But in the present case, it may well be doubted, whether the magnitude of the interest involved, is such as to render it expedient or proper. It would be extremely discourteous to the sovereign, who, from the impulse of friendship and good will, had undertaken the difficult task of attempting to settle a controversy between the two nations, who has evidently bestowed much time and attention upon it, with a sincere desire of possessing himself of its merits, and who has erred in judgment, from the influence, probably, of too strong a desire of avoiding offence to either party. And what, after all, is the wrong which is done us by the decision? We conceive that we have a clearly demonstrable title to the whole country claimed by us. Our claim, however, is questioned, and an adverse claim is asserted by Great Britain, with as much pertinacity as we can exhibit in defence of our own. We have agreed to submit to arbitration this question of conflicting claims. We cannot, therefore, assume the ground that our title is unquestionable, and if we could, we must do it at the hazard of those lamentable consequences which may always result from angry national controversies. Less than a third part of this disputed territory has been awarded to the adverse claimant. It is a part which from its local situation is peculiarly desirable to him, and for the same reason, as well as from its extremely northern position, least valuable to us. By the same act which takes from us this portion of disputed territory, we obtain an undisputed title to another portion, of more than twice the extent, more favorably situated and of greater intrinsic value. What is more, we get rid of a most exasperating controversy between the State most directly interested and the adjoining province, and between our own Government and the nation with whom it is of the greatest importance that we should remain at peace. Under these circumstances, we conceive that we are bound in courtesy to the sovereign, who has endeavored to render us a service, in the discharge of a difficult office of friendship, by

a regard to the honor of the nation, which should make us punctilious in the performance of engagements, even under circumstances which might strictly release us from the obligation, and by sound policy, which should lead us to avoid occasions of controversy with other nations, at some sacrifice of our strict rights, to accept the award which has been made by the King of the Netherlands, and to carry it into immediate execution.

This course appears to be the more reasonable, as on another branch of the decision, which we have yet to notice, a reservation is made in our favor, in a manner equally incompatible with the terms of the submission, and as it is extremely difficult to imagine how these questions of controversy are to be settled, unless on some terms of compromise, in which each party shall yield something of what it conceives to be its just claims, to the spirit of conciliation.

There are some doctrines, maintained in the report above referred to, which deserve notice. The Legislature of Maine say in this report, 'This State has never admitted the authority of the Convention, and cannot consider her rights compromised under it;' and again, 'Should the United States adopt the document as a decision, it will be in violation of the constitutional right of the State of Maine, which she cannot yield.' These passages amount to a denial of the authority of the Government of the United States, to settle the controversy with Great Britain, in a manner which it may judge most proper, and of its right to relinquish, in the way of adjusting the controversy, any part of the territory to which it has laid claim, without the consent of the State of Maine. This doctrine appears to us apocryphal. If the Government of the United States have not full authority to negotiate for the settlement of the controversy, we do not see who has; and if it fall within their province, as possessing exclusively the treaty-making power, to make this adjustment, they must have the necessary powers for carrying it into effect. We are willing to concede, that the Government would have no right to make any cession of the territory of a particular State, unless in a case of urgent necessity, without the consent of the State; but the yielding of a portion of territory, claimed by a State, but never conceded to it, for the sole purpose of settling, on the best terms which can be obtained, the true limits of the State, cannot be regarded as a cession of territory. We cannot,

therefore, conceive that any compact, entered into in good faith for the best practicable adjustment of a disputed line of boundary, by arbitration or by compromise, can be considered a violation of the constitutional rights of the State. If in the making of such compromise, any part of the just rights of the State are sacrificed for the attainment of an advantage to the Union in any other quarter, we see no reason why the State should not receive a just indemnity from the General Government, for the sacrifice so made.

It remains for us to explain in what manner the two other questions, referred to the decision of the arbitrator, have been determined by him. The sources of Connecticut river were ascertained, and delineated on a map by Dr. Tiarks, the British astronomer. The accuracy of this map was admitted by the agent of the United States. It exhibits four principal branches of nearly equal dimensions, all uniting in one near the forty-fifth degree of latitude, called the Connecticut river, Perry's stream, Indian stream, and Hall's stream. The Connecticut, which is situated east of the three others, is designated as the main branch, not merely by its name, and by its flowing through three lakes, called Connecticut lakes, but by receiving separately the waters of the other three. These streams are accurately delineated on Hale's Map of New England, as copied from the map of Dr. Tiarks. In proof that the eastern branch was known by the name of Connecticut river, above the confluence with it of Hall's and Indian streams, a grant of a tract of land from the State of New Hampshire to Dartmouth College, made in the year 1789, was exhibited by the British Commissioner, bounded on one side by this eastern branch, which is there named the Connecticut river. Hall's stream, the extreme western branch, falls into the main branch a quarter of a mile below the old boundary line; and Indian stream three miles above it. The Commissioner on the part of the United States contended, that the head of the west branch of this last named stream is the true north-westernmost head of Connecticut river intended by the treaty, this being the western branch into which the river is divided, above the point supposed in 1783 to be the forty-fifth degree of latitude. The arbitrator overruled this claim, and decided in favor of the British claim, establishing the eastern branch as the Connecticut river to the most northerly of the three lakes, and that the stream situated the farthest to the north-west of those which

fall into this lake, must be considered as the north-westernmost head of the Connecticut river.

Some opinion of the value of the territory thus adjudged to Canada, may be formed from the report of a Committee of the New Hampshire Legislature, made after an examination of this tract of country in the year 1824. They did not make an actual survey of it, but from such computation as they could make, they estimated its extent to be about one hundred and forty, or one hundred and fifty thousand acres, and about half of it to be good land, capable of being converted into good and productive farms. This half of the land is covered with a heavy growth of rock maple, beech, and birch timber, interspersed with bass, spruce, and white pine, indicating a rich and fertile soil. The other half is of a very inferior quality, composed of mountains and swamps. They supposed twelve and a half cents an acre to be a fair estimate of its average value. The whole number of families then settled on this tract of land, was fifty-eight, possessing in all a population of two hundred and eighty-five souls. The lands on which these settlements were made, were described as in general of excellent quality, and as having produced, in the preceding season, as good crops of English grain, as any farms in the State of New Hampshire.

The other subject of the reference was the ratification of the northern boundary of Vermont and New York, to conform with the forty-fifth parallel of latitude. The history of this question exhibits very little proof of sagacity and caution, on the part of the American claimants. By the royal proclamation of October, 1763, establishing the province of Quebec, that province was described as bounded on the south by the forty-fifth parallel of latitude, from the St. Lawrence to the Connecticut river. Subsequently to this date, Governor Moore of New York, which province then extended its jurisdiction to Connecticut river, and Governor Carleton of the province of Quebec, having ascertained by astronomical observations, the points through which the forty-fifth parallel of latitude would pass, made a report thereof to the British Government, and on the 12th of August, 1768, an order was issued by the king in council, confirming these proceedings, and directing that 'the line of division should be run out, and continued as far as each province respectively extends.' Instructions were given to the provincial authorities for carrying this order into effect, and a line was accordingly surveyed and marked along the supposed

forty-fifth parallel of latitude, from the east side of Lake Champlain, where the observations for determining the latitude had been previously made, to the Connecticut river, by Thomas Valentine, deputy-surveyor on the part of the Province of New York, and John Collins, deputy-surveyor of the Province of Quebec, in the years 1771 and 1772. They terminated their line on Connecticut river, two miles and five eighths of a mile above the mouth of Hall's Brook, following the course of the river, and ninety and a quarter miles due east from the boundary fixed on Lake Champlain. In 1773, the line was run west from Lake Champlain, by the surveyors of the two provinces, fifty miles, and in 1774, it was completed to the river St. Lawrence, by John Collins alone, duly appointed to act for both provinces. A plan of the line, surveyed and completed, October 20, 1774, was returned by John Collins to the office of the Secretary of New York, where it still remains; and the Legislative Assembly of New York, by two acts, appropriated eight hundred pounds for the share of the expenses of the province, in running out, marking, and completing this line. The line thus established was made the limit of the grants of the adjoining lands, by the governors of the two provinces, and it has to this day been the limit of the jurisdiction of the two Governments.

There seems to have been no good reason for disturbing a line of boundary thus established, and so long acquiesced in. In the fifth article of the treaty of Ghent, however, it is declared that the part of the boundary between the two countries, from the source of the St. Croix to the St. Lawrence, including, by a definite description, that part which extends along the forty-fifth degree of latitude, 'has not yet been surveyed;' and it is expressly provided, that it shall be surveyed and marked, according to the provisions of the treaty of 1783. It appears that the Government of the United States were led into this error, and into a belief that the actual limit of jurisdiction between the two Governments was too far south, by some proceedings had several years ago, under authority of the State of Vermont. Dr. Williams, in his History of Vermont, says, 'Much pains were taken by the provinces of New York and Canada, to ascertain the latitude of forty-five, by astronomical observations. This was done by Commissioners from both provinces, in the month of September, 1767. At the place where the line crosses Lake Champlain, they erected a monu-

ment of stone, which is yet standing. The line was afterwards run in the year 1772, by J. Carden and J. Collins of Quebec, but with great error. By order of Governor Tichenor, in 1806, I examined the situation of this line in the eastern part of the State. By astronomical observations, I found the monument they had erected on the eastern bank of Lake Memphremagog, was in the latitude of forty-four degrees, fifty-three minutes, forty-six seconds; and at Connecticut river, their monument was in the latitude of forty-four degrees, forty-seven minutes, fifty-nine seconds. Admitting their line to have been run in a straight course, this would imply an error of eight degrees, fifty-two minutes, nineteen seconds in the direction, and occasions the loss to Vermont of $401,973\frac{1}{2}$ acres of land; equal to 17 44-100ths townships.' A similar statement was made by the Governor of Vermont, in his speech to the Legislature, in October, 1806, and he intimated the propriety of making an application on the subject to the national Government. The gross error into which Dr. Williams fell, must be attributed to his want of the proper instruments for making accurate observations, and his want of practical experience, which would have enabled him to detect their inaccuracy. On the other hand, several communications were made to the provincial Government of Lower Canada, which led them to the belief that the existing boundary was too far north. The surveyor-general of Lower Canada in 1807, made a report to the administrator of the Government, in which he stated that the line was evidently crooked, and assigned grounds for believing that it encroached on the province as much as three geographical miles at the Connecticut river, and one mile on the meridian of Montreal. In this state of the impressions of the two parties, it is not remarkable that both Governments were ready to accede to a proposition for a re-survey and rectification of the boundary, and that a provision for that object was made in the treaty of Ghent.

We have already stated the proceedings of the Commissioners under this treaty, and the results of the surveys made under their direction. The question is thus presented in the American statement.

'According to the observations of latitude taken by astronomers appointed in pursuance of that article, the forty-fifth parallel of north latitude appears to be about three quarters of a mile

south of the abovementioned old line on the Connecticut river and on Lake Champlain; though it nearly coincides with the said line on the river St. Lawrence. The question referred is, whether under the treaties of 1783 and of Ghent, the old line may continue to be considered as the boundary of the United States, or whether this shall be surveyed anew, according to the late observations of latitude.'

The statement goes on to recite, that this part of the line had been ascertained by observations deemed proper at the time, and officially surveyed under the provincial Governments and confirmed by the Crown; that the line had been for more than thirty years from the treaty of 1783, held as the boundary between the two countries, without any proposition from either Government to have it re-surveyed or altered; and that, nevertheless, the treaty of Ghent assumed that it had not been surveyed. They therefore submitted the question, whether, according to the true spirit and intent of the treaty, the part of the line which was thus shown to have been in fact surveyed and determined by competent authority, was not excepted from the provision, which directs the boundary to be surveyed, and ought not to remain as heretofore, the boundary between the two countries.

In the British statement it is averred, that the negotiators of the treaty of Ghent were not unacquainted with the existence of the old line; and that no reluctance was shown on the part of the United States to carry on the operations for the determination of the parallel of latitude under the Ghent commission, till some time after it was known that the changes which would be produced by the correction would be mainly against the interest of the United States, principally by the loss of the fortifications at Rouse's Point, on the western bank of lake Champlain. The statement concludes by maintaining, as a point clearly proved, that there was sufficient reason for making provision for running and marking the line on the parallel of latitude anew; that the provision for such a re-survey is clearly expressed in the treaty; that there is no reason to doubt, that it was the intention of the negotiators who framed the treaty, as well as of the Governments who ratified it, that a new line should be established; that both Governments sanctioned for several years the measures which were taken for carrying into effect this particular provision; and that Great Britain was entitled to insist on having the fifth article of the treaty of Ghent carried into complete effect.

The decision of the arbitrator on this branch of the question is to the following effect.

‘ Considering : That the fifth article of the treaty of Ghent of 1814, does not stipulate that such portion of the boundaries which may not have hitherto been surveyed, shall be surveyed ; but declares that the boundaries have not been, and establishes that they shall be, surveyed ;—that, in effect, such survey ought, in the relations between the two powers, to be considered as not having been made from the Connecticut to the river St. Lawrence, named in the treaties Iroquois or Cataraquy, since the ancient survey was found to be incorrect, and had been ordered, not by a common accord of the two powers, but by the ancient provincial authorities ;—that in determining the latitude of places, it is customary to follow the principle of the observed latitude ;—and that the Government of the United States of America has erected certain fortifications at the place called Rouse’s Point, under the impression that the ground formed part of their territory,—an impression sufficiently authorized by the circumstance that the line had, until then, been reputed to correspond with the forty-fifth degree of north latitude,

‘ We are of opinion : That it will be proper to proceed to fresh operations to measure the observed latitude, in order to mark out the boundary from the river Connecticut, along the parallel of the forty-fifth degree of north latitude, to the river St. Lawrence, named in the treaties the Iroquois or Cataraquy, in such manner, however, that, in all cases, at the place called Rouse’s Point, the territory of the United States of America shall extend to the fort, which is established there, and shall include that fort and a circle about it of a radius of one *kilometre*.’

The fortification thus reserved to us, was erected by our Government on the western bank of lake Champlain, soon after the date of the treaty of Ghent. It was intended to be a work competent to withstand a siege, and to mount about three hundred cannon. It is situated between the old boundary line and the ascertained forty-fifth degree of latitude. The reservation of a circuit of a *kilometre*, which is equal to about two hundred rods, will probably extend our frontier at that point to the old boundary. It will be observed, that the part of the decision, which makes this reservation, is of precisely the same character, as that part of the award on the first branch of the question submitted, which substitutes the channel of the river St. John, for the highlands described in the treaty, as the north-eastern boundary. The only question, in

relation to this part of the boundary, to be decided under the treaty of Ghent and the convention of 1827, was to determine, by practical observations and surveys, the precise points through which the forty-fifth parallel of latitude actually passes, and to mark that line as the boundary designated by the treaty of 1783. No authority is given, to make any reservation or exception from the results of a line to be so drawn. The reason assigned by the arbitrator, for making this exception, would be a good one, if the parties had not agreed to abide by another principle in settling the question, and the same reason would have applied with equal force to the whole line. Our own Government must of course be satisfied with the reservation in our favor, and the British Government should accede to it, on the same principle, on which we have argued, that we ought to accept the decision on the other question. In one case, a tract of land important to the British provinces, as affording the means of easy communication between them, is awarded to Great Britain; in the other, a fort built by our own Government, at a very great expense, on land which is found to be within the British boundary, is restored to us by this decision. It is not material, whether the advantage gained on one part is an exact equivalent for what is gained by the other. It is sufficient that each party makes a valuable acquisition under the award, and that what is lost by each is of little moment, compared with the disadvantage of holding it by a disputed title, and with the mischiefs of a long protracted controversy. The objection, that the sacrifice which is made in the loss of territory falls upon one State, while the advantage gained accrues to another or to the Government of the Union, would be easily removed, by granting, as an indemnity to the State suffering the injury, the value of the possession acquired. The value of the territory lost by Maine, as a saleable property, although it may have for the most part a good soil, cannot be very great, and the right of jurisdiction over so remote a tract of territory, enclosed between two foreign provinces, and inhabited only by a small number of half-civilized people, speaking a foreign language, who have settled themselves upon it, without authority from either Government, must be still less.

We cannot close this article, without expressing our surprise at the course which this controversy has taken, under the commission appointed in compliance with the provisions of the

treaty of Ghent, and the subsequent proceedings. The questions to be settled were of the plainest kind ; and although they required laborious investigations for ascertaining the features of the country, by which the line of boundary was to be determined, they involved not one point of real doubt or difficulty. It appears hardly possible, that a person free from any bias arising from border prejudices, or a feeling of interest in the result, should doubt upon the proper decision of either of the points in question ; that any two persons of sound understanding, after a fair investigation of the facts in the case, should differ in their judgment upon them. In so clear a case, it might have been fairly expected that the Commissioners appointed under the treaty, as a tribunal to decide these questions, looking only to the merits of each question, would have met them without regard to the paltry consideration, whether the result were favorable or adverse to the interest of the Governments, from which they respectively received their appointments. The Commissioners unfortunately took the part of advocates, and not of judges. On no other ground, can we account for the decision of the British Commissioner, by which he would establish the north-west angle of Nova Scotia at Mars Hill, where there is no angle whatever in the boundary of that province, but a straight mathematical line ; or for the judgment of the American Commissioner, that the treaty of Ghent does not require a survey of the line along the forty-fifth parallel of latitude, in opposition to the express words of the treaty, which provide that the Commissioners to be appointed under the treaty, shall cause that boundary to be surveyed and marked. Proceedings in a similar spirit would not be creditable to a board of referees, acting in the most insignificant case, under the jurisdiction of a county court ; much less are they of a character to give an enviable renown to a tribunal established for the purpose of deciding questions affecting the repose and mutual good understanding of two nations.